

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

MARJORIE CHILDERS,

Plaintiff

V.

NO. 3:92CV095-B-D

BENTON COUNTY SCHOOL DISTRICT, ET AL.,

Defendants

MEMORANDUM OPINION

The issue of the proper amount of attorney's fees and expenses to be awarded the plaintiff pursuant to 42 U.S.C. §2000e-5(k) and 42 U.S.C. §1988 is before the court.

The plaintiff seeks an award of fees in the sum of \$55,600.00 and expenses in the sum of \$3,546.04. In response, the defendant asserts that the plaintiff's proposed amount is excessive in that many of the entries are vague, excessive, and duplicative, and in that some of the entries should be billed at a lesser rate as non-legal work. After reducing the fee for non-legal work and reducing the hours for excessive and duplicative entries, the defendant recommends a fee of \$27,599.00, less an additional unspecified amount for vague entries. The plaintiff has submitted the affidavits of attorneys Guy Gillespie, Nancy Maddox, Janet Arnold, and Helen Robinson, an itemization of services and fees, and a summary of the hourly rate and total number of hours of work for each attorney and paralegal. The itemization reflects a total of

566.5 hours of work performed during a period of two years and ten months.

I. ATTORNEY'S FEES

In light of the twelve factors set out in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974),¹ the court must determine "a lodestar figure equal to the number of hours reasonably expended multiplied by the prevailing hourly rate in the community for similar work" and adjust the lodestar figure to reflect any factors not otherwise subsumed in the lodestar calculation. Nisby v. Commissioners Court of Jefferson County, 798 F.2d 134, 136-37 (5th Cir. 1986); Jackson v. Color Tile, Inc., 638 F. Supp. 62, 64 (N.D. Miss. 1986), aff'd 803 F.2d 201 (5th Cir. 1986).

(A) Number of hours reasonably expended:

Since sufficient detail is required in any application for determining an accurate award, unreasonably vague submissions are not compensable. See Hensley v. Eckerhart, 461 U.S. 424, 433, 76 L. Ed. 2d 40, 50 (1983); Von Clark v. Butler, 916 F.2d 255, 259-60 (5th Cir. 1990). The following vague entries should be deleted in their entirety as non-compensable: 7/8/92, 1/25/92, and 10/21/93 (Gillespie); 6/12/92, 6/18/92 through 6/23/92, 7/1/92 through 7/8/92, 7/13/92, 7/22/92, 7/27/92 through 7/29/92, 8/12/92 through

¹ Under Local Rule 15(b)(3), the Johnson factors are to be considered for any fee application.

9/11/92, 9/15/92 through 9/24/92, 9/30/92, 10/6/92 through 10/9/92, 11/3/92 through 11/24/92, 12/15/92 through 1/4/93, 1/8/93, 1/15/93, 1/20/93 through 1/28/93, 2/10/93 through 2/12/93, 2/19/93, 2/26/93, 3/3/93 through 3/4/93, 3/30/93, 4/12/93 through 4/23/93, 5/4/93, 5/24/93, 7/12/93, 7/14/93, 8/2/93 through 8/18/93, 9/1/93, 10/15/93, 11/9/93, 11/11/93, 11/23/93, 12/29/93 through 1/3/94, 1/20/94, and 2/9/94 (Maddox); 8/5/91, 8/6/91(3)² through 8/20/91, 8/23/91 through 9/4/91, 9/20/91, 12/10/91 through 5/12/92, 5/25/92(2), 5/26/92 through 5/29/92(1), 6/5/92(2), 6/15/92, 6/27/92 through 7/1/92, 7/13/92, 7/31/92 through 9/14/92, 10/6/92 through 1/29/93, 2/4/93(2,3), 2/10/93 through 3/24/93, 3/29/93 through 8/20/93, 9/18/93, 9/28/93(2,3), 10/5/93 through 10/7/93(1), 10/7/93(3) through 10/18/93, 10/25/93, 11/12/93(2) through 11/16/93(1), 12/2/93 through 12/8/93, 12/15/93, 1/4/93 through 1/6/93, and 1/13/93 through 1/24/93 (Robinson). The following entries contained some vague itemizations, and should be deleted in part: 2/5/93 (reduced by 1.0 hour), 2/24/93 (reduced by .8 hour), 3/2/93 (reduced by .2 hour), and 3/23/93 (reduced by .4 hour) (Maddox).

Hours which are excessive, redundant, or otherwise unnecessary are not hours reasonably expended and should be excluded from

² Robinson made multiple entries on several dates. The number in parentheses after the date indicates which entry is referenced. If there is no number, all of the entries for that date are included.

calculation. Hensley, 461 U.S. at 434, 76 L. Ed. 2d at 50-51. The 2/7/93 through 2/8/93 and 2/22/93 through 2/23/93 entries for Maddox's preparation for and attendance at depositions as well as the 2/8/93 and 3/26/93 entries for Robinson's attendance at depositions is duplicative and thus non-compensable. Mississippi State Chapter Operation Push v. Mabus, 788 F. Supp. 1406, 1416 (N.D. Miss. 1992) (no more than one attorney is necessary for the taking of a deposition). Likewise, the following entries should be excluded as duplicative: 2/18/93, 6/10/93, and 10/5/93 (Maddox).

The following entries are excessive and should be reduced as indicated:³ 6/10/92 through 6/25/92 (from 3.25 hours to 1.5 hours), 9/21/92 (from 2.25 hours to 1.0 hour), 1/11/93 (from .4 hour to .2 hour), 1/29/93 (from .3 hour to .15 hour), 2/10/93 (from .5 hour to .25 hour), 2/18/93 (from 2.5 hours to 1.5 hours), 4/29/93 (from 1.25 hours to .5 hour), 5/17/93 through 6/9/93 (from 14.5 hours to 6.75 hours), 7/21/93 (from 1.5 hours to .5 hour), and 9/28/93 (from 1.5 hours to 1.0 hour) (Gillespie); 2/16/94 through 4/6/94 (from 12.7 hours to 10.0 hours) and 5/4/94 through 5/18/94 (from 12.6 hours to 8.0 hours) (Arnold); 6/10/92 (from 1.5 hours to 1.0 hour), 6/17/92 through 6/30/92 (from 12.0 hours to 4.25 hours), 7/21/92 (from .9 hour to .5 hour), 7/24/92 (from .3 hour to .2 hour), 10/29/92 (from 1.5 hours to .7 hour), 12/8/92 (from .4 hour

³ References covering multiple dates are exclusive of previously deleted entries.

to .2 hour), 1/11/93 (from .7 hour to .4 hour), 2/3/93 (from 3.0 hours to 1.5 hours), 2/9/93 (from 5.2 hours to 2.5 hours), 2/15/93 (from 3.1 hours to 2.0 hours), 2/16/93 (from 1.5 hours to 1.0 hour), 3/1/93 (from 1.7 hours to 1.2 hours), 3/15/93 (from 1.0 hour to .5 hour), 3/19/93 (from 2.1 hours to 1.5 hours), 3/24/93 (from 2.0 hours to 1.0 hour), 3/29/93 through 4/29/93 (from 17.9 hours to 7.2 hours), 4/30/93 through 5/3/93 (from 1.2 hours to .6 hour), 5/10/93 through 6/15/93 (from 78.9 hours to 31.0 hours), 7/15/93 through 7/16/93 (from 6.1 hours to 3.5 hours), 7/26/93 through 7-27-93 (from 1.25 hours to .8 hour), 8/26/93 (from .4 hour to .2 hour), 10/4/93 (from 3.0 hours to 1.5 hours), 10/6/93 (from 2.3 hours to 1.0 hour), 10/19/93 (from 1.5 hours to 1.0 hour), 11/10/93 (from 1.2 hours to .5 hour), 12/8/93 (from 3.0 hours to 1.0 hour), 1/4/94 (from 1.5 hours to .5 hour), and 3/21/94 (from 2.7 hours to 1.0 hour) (Maddox); 9/24/91 (from 2.0 hours to 1.0 hour), 5/29/92(2) (from .5 hour to .25 hour), 6/2/92 (from 3.0 hours to 1.5 hours), 6/5/92 (from 2.0 hours to .75 hour), 6/10/92 (from .5 hour to .25 hour), 6/18/92 (from 1.5 hours to .5 hour), 7/6/92 (from 1.5 hours to .5 hour), 7/24/92 (from 1.5 hours to .5 hour), 7/27/92 (from 1.5 hours to .5 hour), 10/5/92 (from 1.5 hours to .5 hour), 2/4/93(1) (from 2.0 hours to 1.0 hour), 3/25/93 (from 1.5 hours to .5 hour), 8/24/93 (from 1.5 hours to .5 hour), 9/28/93(1) (from 1.0 hour to .5 hour), and 9/30/93 (from 1.5 hours to .5 hour) (Robinson); 6/11/92 through 6/16/92 (from 8.9 hours to 4.0 hours)

(Brandon Quarles--law clerk); 1/5/94 (from .15 hour to 0.0 hours) (Cheryl Caffey--paralegal).

The compensable hours expended are as follows: 74.05 hours by Gillespie, 18.0 hours by Arnold, 136.8 hours by Maddox, 34.25 hours by Robinson, 4.0 hours by law clerks, and 35.4 hours by paralegals.

(B) Hourly rates:

Travel and clerical activity should be compensated at a lesser rate. Watkins v. Fordice, 7 F.3d 453, 459 (5th Cir. 1993). Therefore, rates for the following entries should be reduced accordingly:⁴ 2/8/93 (travel--2.0 hours reduced to half the allowable rate) and 10/5/93 (travel--1.0 hour reduced to half the allowable rate) (Gillespie); 3/26/93 (travel--2.0 hours reduced to half the allowable rate) (Maddox).

Gillespie's affidavit states that the following hourly rates for attorneys, law clerks, and paralegals are reasonable and customary for services rendered in this action:

\$140.00 per hour for Guy Gillespie;

\$ 95.00 per hour for Nancy Maddox and Helen Robinson;

\$ 50.00 per hour for law clerks; and

\$ 40.00 per hour for paralegals.

The plaintiff has submitted the affidavits of two independent attorneys, Peyton S. Irby, Jr. and A. Spencer Gilbert III, which

⁴ The court has already reduced as excessive several entries which included clerical work performed by attorneys.

support the aforementioned rates. Additionally, Arnold's affidavit states that \$100.00 per hour is reasonable and customary for her services in this action.

The court finds that the proposed hourly rates are reasonable and customary and should be multiplied by the compensable hours expended (subject to the aforementioned reduction in rate for travel time) to arrive at a lodestar amount of \$29,727.75.

(C) Adjustment to the lodestar amount:

The lodestar figure is presumptively reasonable. City of Burlington v. Dague, 505 U.S. ___, ___, 120 L. Ed. 2d 449, 456 (1992). It should be enhanced only in certain exceptional cases. Von Clark, 916 F.2d at 260. The court should not enhance the lodestar unless the prevailing party shows that enhancement is necessary to make the award of attorney's fees reasonable. Blum v. Stenson, 465 U.S. 886, 897-98, 79 L. Ed. 2d 891, 900-01 (1984).

Although the plaintiff addresses each of the twelve Johnson factors in her brief, only three of the factors raised merit specific mention by the court. The plaintiff maintains that the time and labor involved were increased by the defendant's actions in relying on a court order which it would not specifically identify and in repeatedly pressuring the plaintiff to settle her case. The plaintiff mentions that the issue was somewhat novel in that it was a case of reverse discrimination. Finally, the plaintiff contends that the case was undesirable for the Holcomb,

Dunbar firm because of its ongoing representation of local school districts. The court finds none of the plaintiff's arguments in this regard to be persuasive, and therefore an adjustment to the lodestar calculation is not warranted.

II. EXPENSES

The plaintiff seeks to recover the sum of \$3546.04 for case expenses. The defendant objects to expenses for telephone charges for calls among co-counsel and to the plaintiff, as well as for certain unspecified telefax charges. The court finds that all of the plaintiff's telephone and telefax charges are reasonable and necessary, and the plaintiff should be compensated accordingly. However, the court finds that the travel expenses requested by the plaintiff are excessive, and should be compensated at the rate of \$.25 per mile. Therefore the court finds that an award of \$3,507.79 for case expenses is appropriate for this action.

III. CONCLUSION

For the foregoing reasons, the court will award the plaintiff \$29,727.75 for attorney's fees and \$3507.79 for expenses.

An order will issue accordingly.

This, the _____ day of April, 1995.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE